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Aug 14 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRALEN ELIJAH BARKSDALE,

APPELLANT

APPELLATE CASE NO. 2025-001939

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	3
ARGUMENTS	
I. The trial court erred by allowing the state to admit appellant’s phone records into evidence after the trial court suppressed his phone records because defense counsel did not open the door to the admission of those records.....	4
Relevant Facts.....	4
Discussion.....	12
II. The trial court erred by refusing to suppress co-defendant J.C.’s phone records because appellant lacked standing since appellant had the right to challenge evidence that the state would use against appellant where the search warrant lacked a sufficient affidavit to establish probable cause.....	17
Relevant Facts.....	17
Discussion.....	20
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<i>Adams v. Williams</i> , 407 U.S. 143 (1972).....	21
<i>Bowman v. State</i> , 422 S.C. 19, 809 S.E.2d 232 (2018).....	12, 14
<i>Ellenburg v. State</i> , 367 S.C. 66, 625 S.E.2d 224 (2006).....	12
<i>Franks v. Delaware</i> , 438 U.S. 154 (1978).....	21
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983)	20, 21, 24
<i>State v. 192 Coin-Operated Video Game Machines</i> , 338 S.C. 176, 525 S.E.2d 872 (2000).....	5
<i>State v. Baccus</i> , 367 S.C. 41, 625 S.E.2d 216 (2006).....	21, 24
<i>State v. Bellamy</i> , 336 S.C. 140, 519 S.E.2d 347 (1999)	20, 23
<i>State v. Brown</i> , 447 S.C. 617, 929 S.E.2d 415 (Ct. App. 2026)	20, 21
<i>State v. Carroll</i> , Op. no. 2024-000722, (S.C. Ct. App. filed August 12, 2026) (Davis Adv. Sh. No. 30)	22, 23
<i>State v. Collins</i> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	3
<i>State v. Dupree</i> , 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003).....	20, 24
<i>State v. English</i> , 443 S.C. 49, 902 S.E.2d 385 (2024)	3, 23
<i>State v. Frasier</i> , 437 S.C. 625, 879 S.E.2d 762 (2022).....	3
<i>State v. Gentile</i> , 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007)	5
<i>State v. Heyward</i> , 426 S.C. 630, 828 S.E.2d 592 (2019).....	3, 12, 13, 15, 16
<i>State v. Kinloch</i> , 410 S.C. 612, 767 S.E.2d 153 (2014).....	20, 24
<i>State v. Martin</i> , 292 S.C. 437, 357 S.E.2d 21 (1987)	12
<i>State v. Martin</i> , 347 S.C. 522, 556 S.E.2d 706 (Ct. App. 2001).....	20, 24
<i>State v. McGuinn</i> , 268 S.C. 112, 232 S.E.2d 229 (1977)	21

<i>State v. McKnight</i> , 291 S.C. 110, 352 S.E.2d 471 (1987).....	20, 21, 22, 23
<i>State v. Page</i> , 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008).....	3, 12, 16
<i>State v. Rutledge</i> , 373 S.C. 312, 644 S.E.2d 789 (Ct. App. 2007).....	24
<i>State v. Simmons</i> , 430 S.C. 1, 841 S.E.2d 845 (2020)	12, 13, 14, 15, 16
<i>State v. Smith</i> , 301 S.C. 371, 392 S.E.2d 182 (1990)	21, 24
<i>State v. Warner</i> , 436 S.C. 395, 872 S.E.2d 638 (2022)	5
<i>State v. Weston</i> , 329 S.C. 287, 494 S.E.2d 801 (1997).....	21
Statutes	
S.C. Code Ann. § 17-13-140 (2003).....	20

STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred by allowing the state to admit appellant's phone records into evidence after the trial court suppressed his phone records because defense counsel did not open the door to the admission of those records?

II.

Whether the trial court erred by refusing to suppress co-defendant J.C.'s phone records because appellant lacked standing since appellant had the right to challenge evidence that the state would use against appellant where the search warrant lacked a sufficient affidavit to establish probable cause?

STATEMENT OF THE CASE

In April of 2022, the Greenville County grand jury indicted appellant for one count of murder and one count of possession of a weapon during the commission of a violent crime. R *(Indictment). On September 8, 2025, appellant's case was called to trial before the Honorable G.D. Morgan, Jr., and a jury. Tr. 1. Seth Redus Johnson and Grace Barringer Moroney represented the state. Tr. 1. Lawrence W. Crane represented appellant. Tr. 1. Ultimately, the jury found appellant guilty as indicted. Tr. 693, ll. 11-19. Judge Morgan sentenced appellant to a total sentence of 40 years imprisonment, comprised of 40 years as to the murder charge and a 5-year concurrent sentence as to the weapons charge. Tr. 713, l. 22 – 714, l. 2. Appellant filed a timely notice of appeal. R *(Notice of appeal).

This brief follows.

STANDARD OF REVIEW

“A trial court’s determined that a party has opened the door to the introduction of otherwise admissible evidence is within the sound discretion of the trial judge and is reviewed for an abuse of discretion.” *State v. Heyward*, 426 S.C. 630, 636, 828 S.E.2d 592, 594 (2019) (citing *State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008)). “This occurs when a trial court’s conclusions lack evidentiary support or are controlled by an error of law.” *Id.* (citing *State v. Collins*, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014)).

“In criminal cases, appellate courts sit to review errors of law only.” *State v. English*, 443 S.C. 49, 55, 902 S.E.2d 385, 388 (2024). “[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [appellate courts] review the trial court’s factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to *de novo* review.” *State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

ARGUMENTS

I.

The trial court erred by allowing the state to admit appellant's phone records into evidence after the trial court suppressed his phone records because defense counsel did not open the door to the admission of those records.

Relevant facts

Appellant was charged with murder and possession of weapon during commission of a violent crime concerning a May 5, 2020, shooting at the InTown Suites in Greenville, South Carolina. R *(Indictment). The state alleged that a cooperating co-defendant, J.C.,¹ texted the deceased to meet her at the InTown Suites where appellant ultimately arrived, and J.C. testified that appellant shot the deceased. Tr. 350, l. 3 – 351, l. 9; Tr. 354, ll. 10-23.

Pretrial motion to suppress

Prior to trial, defense counsel moved to suppress phone records from appellant.² Tr. 66, l. 24 – 67, l. 1. Counsel noted that the June 8th search warrant for appellant's phone records listed -1136 as the telephone number. Tr. 73, ll. 9-12. He emphasized that no name was given, and instead, the warrant merely said "subscriber," and "wireless caller." Tr. 73, ll. 14-17. Specifically, he argued that the state was "looking for records for a telephone number, no person given." Tr. 73, ll. 21-23. Defense counsel read the following as contained in the search warrant affidavit:

¹ J.C. was initially arrested and charged with murder in November of 2020, Tr. 371, ll. 6-12, but she pled guilty to accessory after the fact in family court and agreed to testify in appellant's case, Tr. 418, ll. 15-24.

² Defense counsel also moved to suppress phone records obtained from co-operating codefendant J.C. and the deceased. However, those search warrants will be discussed further in Issue II.

During the course of this investigation, a Crime Stoppers tip was received which stated [J.C.], JaMarcus Lee and [appellant] were the suspects responsible for killing the [deceased] after [J.C.] used her phone to communicate with the victim and lured him to the InTown Suites so she and the other two suspects could rob the [deceased]. However, things did not go as planned and the [deceased] was shot and killed. Affiant stated the tipster also stated [J.C.] drove a white 2012 Dodge Journey with a busted out back window, and surveillance video from the hotel shows the van leaving the scene at a high speed after the shooting. Affiant believes that [J.C.], suspect, communicated with [appellant], by . . . him using cell phone number, 'and it gives a number,' to plan, conspire and ultimately kill the [deceased]. Affiant further believes that examination of forensic process and said records is necessary for a complete and thorough investigation.

Tr. 74, ll. 2-20 (internal quotation makes omitted). Defense counsel argued that there was no probable cause in the affidavit as it was based on an uncorroborated Crime Stoppers tip. Tr. 74, ll. 21-23. Defense counsel cited *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 525 S.E.2d 872 (2000), *State v. Gentile*, 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007), and *State v. Warner*, 436 S.C. 395, 872 S.E.2d 638 (2022), in support of his argument. Tr. 75, l. 2 – 76, l. 10. He analogized the search warrant in appellant's case to the search warrant in *Warner*. Tr. 76, ll. 11-19. He requested exclusion of the cellphone records because there was no corroboration, no investigation, and just a tip that law enforcement did not know the veracity of. Tr. 76, ll. 20-23.

The state responded that Investigator Antonio Bailey could testify as to the warrant. Tr. 78, ll. 6-7. The state likewise conceded that the warrant stated, "Affiant believed [J.C.], suspect, communicated with [appellant], suspect, by calling him using the phone number [] -1136," which did not "point blank say that the number ending in 1136 is [appellant's]." Tr. 79, ll. 5-10. The state argued that was inferred. Tr. 79, l. 11. The state argued the information in the affidavit was not based only on a tipster. Tr. 80, ll. 1-6. The state pointed to surveillance footage that

Investigator Bailey watched, however, defense counsel argued that information about surveillance footage was not in the affidavit. Tr. 78, ll. 15-25; Tr. 80, l. 14-20.

The trial court inquired where in the affidavit information was provide that “gives you the probable cause that really gets you to leap to the phone number, Tr. 84, ll. 8-12, to which the state argued the warrant should be reviewed in a common sense and realistic fashion, Tr. 85, ll. 4-11. The state agreed that, on its face, it appears to be a conclusory statement but asserted it was a “common sense extrapolation.” Tr. 87, ll. 5-7. The trial court ultimately ruled that “[t]he problem here is there’s nothing in this affidavit that shows that this could be [appellant’s] number.” Tr. 89, ll. 4-15. The trial court thus granted defense counsel’s motion and suppressed appellant’s phone records because there was not enough probable cause that tied the number to anyone as set forth in the affidavit. Tr. 89, ll. 15-19.

Trial

During trial, the state called Investigator Bailey, the lead investigator who responded to the scene on May 5, 2020. Tr. 226, l. 14 – 227, l. 9. He testified that when he arrived he was directed to the deceased’s car, which was backed in alongside the building. Tr. 228, ll. 11-16. He observed the deceased slumped over in the driver’s seat and saw several bullet holes in the driver’s side door. Tr. 229, ll. 1-5. He requested and reviewed video surveillance from the hotel that night. Tr. 229, ll. 13-23. On that footage, he observed the deceased’s mustang pulling into the hotel followed by a Dodge white Journey pulling in several minutes after the mustang. Tr. 231, l. 7 – 232, l. 23. He learned that the Dodge Journey was registered to J.C.’s grandmother from the DMV. Tr. 233, ll. 19-24. He determined that J.C. was driving the Dodge Journey on the night of the incident. Tr. 235, ll. 10-16. He spoke with J.C. for the first time on May 13, 2020. Tr. 235, ll. 17-20. He recovered cellphones from the deceased’s car, which were

extracted, and he confronted J.C. with them during their first interview. Tr. 235, l. 21 – 236, l. 13. Prior to speaking with J.C., Investigator Bailey obtained a search warrant for her phone. Tr. 237, ll. 9-18. In J.C.'s contacts, he saw appellant's name, and based on that information, he sought arrest warrants. Tr. 242, ll. 10-18.

On cross-examination, Investigator Bailey agreed that he found appellant's contact in J.C.'s phone. Tr. 252, ll. 7-9. Counsel then inquired, "[a]s a result of that, you got an arrest warrant. That's what you testified to," to which Investigator Bailey replied, "No, sir. I don't think I testified to that." Tr. 252, ll. 10-12. Counsel asked how many contacts were in J.C.'s phone in addition to appellant, and Investigator Bailey said he did not know. Tr. 252, ll. 13-17. In total, he interviewed J.C. three times, during which she was not "totally forthcoming." Tr. 253, ll. 2-16. Investigator Bailey did not speak with appellant about the incident. Tr. 252, l. 24 – 253, l. 1. He agreed that he did not have any witnesses from the hotel identified appellant as being present at the hotel. Tr. 254, ll. 1-7.

At a bench conference, the state raised that defense counsel had opened the door to appellant's phone records. Tr. 256, ll. 7-8. The state argued that defense counsel's question on cross-examination "about so you arrested [appellant] based on the contacts in [J.C.]'s phone," opened the door. Tr. 256, ll. 9-13. The state argued that Investigator Bailey's response of "no that wasn't it," was not correct because Investigator Bailey also had the cell site location data. Tr. 256, ll. 13-24. The state argued that defense counsel elicited testimony that "opens the door clearly to us getting cell site location data in through Investigator Bailey." Tr. 256, ll. 18-24. Defense counsel argued he merely asked a question that the state had already asked on direct examination and did not open the door. Tr. 257, ll. 2-14. The testimony was played back for the trial court's consideration. Tr. 258, ll. 19-20. The state argued that it still believed defense

counsel stepped over the line based on his follow-up questions concerning how many contacts were in the phone. Tr. 259, ll. 13-16. The state argued that defense counsel “tried to just paint it as just the contact is what got the arrest warrant.” Tr. 259, ll. 16-18. The state then argued that its “position is that he’s painted this investigator as not doing his due diligence and he’s not able to answer fully and truthfully as to his investigation based on his cross-examination question.” Tr. 260, ll. 1-4.

The trial court stated that “[r]ight now I’m not going to rule because obviously you are not putting that evidence in right now. And what I’ve heard so far, I don’t believe that the door has been open[ed].” Tr. 263, ll. 9-12. The trial court continued that what it heard did not cross the line since defense counsel did not phrase it as “that’s the only thing that you used or that’s the only information or evidence you use to arrest him . . .” Tr. 263, ll. 12-23. Investigator Bailey’s testimony resumed with the state’s re-direct examination. Tr. 265, l. 18.

The state called J.C., who testified that she had dated appellant on-and-off. Tr. 329, ll. 1-6. She explained that in April of 2020 she came back into contact with appellant. Tr. 333, ll. 17-19. Based on State’s Exhibit 59, which was entered over defense objection, J.C. explained that she created a contact for appellant on March 17, 2020, that she changed on April 7, 2020. Tr. 334, l. 14 – 335, l. 10; *see also* R *(State’s Exhibit 59). She testified that on May 5, 2020, she was hanging out with appellant. Tr. 349, ll. 9-11. They argued and went separate ways. Tr. 349, l. 24 – 350, l. 2. She decided to text the deceased. Tr. 350, l. 4. She testified that they were supposed to hook up. Tr. 351, l. 25 – 351, l. 3. She chose the InTown Suites as the meet-up spot. Tr. 351, ll. 4-9. She was driving a white Dodge and parked at the hotel facing outwards. Tr. 352, ll. 9-25. The deceased arrived and parked in the opposite direction of her car. Tr. 353, ll. 12-13. She described that as they were talking, the deceased kept looking back at the fence

area. Tr. 353, ll. 12-18. She turned around and saw appellant coming from behind the white van in the parking lot. Tr. 353, ll. 18-19. The deceased tried to leave and began backing out when appellant shot and killed him. Tr. 354, ll. 10-14.

On cross-examination, J.C. testified that she lied in all of her interviews “until [she] came forward and told the truth.” Tr. 431, ll. 17-18. She went through her statements. Tr. 433, l. 23 – 438, l. 4. While asking J.C. how it could be known that she did not kill the deceased, she replied, “Well, you’ve got plenty of evidence.” Tr. 445, ll. 5-8. Defense counsel inquired, “Tell me what we’ve got. There’s nothing on that table.” Tr. 445, ll. 9-10. J.C. stated, “You don’t got phone records?” Tr. 445, l. 11. Counsel responded, “No we don’t. The only testimony we have is you.” Tr. 445, l. 12. Finally, J.C. agreed that during her guilty plea hearing, she did not identify the phone number ending in -1136 as appellant’s. Tr. 463, ll. 1-22.

After J.C. concluded her testimony, the state moved to enter the cell phone records of the deceased and J.C. into evidence pursuant to the Uniform Business Records Act. Tr. 467, ll. 1-3. Then, the state contended that defense counsel opened the door to allow evidence from appellant’s cell phone records that were excluded earlier in the trial. Tr. 468, ll. 13-18. The state argued that counsel said the only evidence that put appellant at the scene was her testimony, to which J.C. replied there were phone records and defense counsel stated that there were not. Tr. 468, l. 23 – 469, l. 1. The state argued that in totality with defense counsel’s prior questioning the door to the cell phone records was opened. Tr. 469, ll. 1-9. The testimony was played back for the trial court. Tr. 469, ll. 11-12. Defense counsel responded that he asked J.C. what they had, she said phone records, and he said those were not on the table. Tr. 469, ll. 15-20. The state replied that there was a clear implication that the only thing that law enforcement built this case on was J.C.’s testimony. Tr. 470, ll. 8-10. Defense counsel noted that he did not ask J.C. about

phone records and instead responded to her that they were not on the table, which was not an inference that there was nothing else. Tr. 470, l. 23 – 471, l. 1. He argued that he did not open the door for the state to “bring in [appellant’s] phone records which were illegally seized.” Tr. 471, ll. 1-3.

The trial court stated, “I candidly admit that it’s a close call, but I do believe the door has been opened.” Tr. 471, ll. 12-13. The court continued that, “in combination with the testimony yesterday, I do believe that through that line of questioning right there does open the door because it does leave the jury with thinking there’s nothing else there when there is evidence there.” Tr. 471, ll. 15-20. The trial court stated, “I suppressed it and you made the argument. And I think I correctly suppressed it.” Tr. 471, ll. 20-21. The court concluded that, “But I think subsequent to my suppression of the evidence, I think that the door has been opened.” Tr. 471, ll. 23-24.

After a recess, defense counsel raised that the state’s witness brought up the phone records, and thus, she opened the door rather than defense counsel. Tr. 472, l. 25 – 473, l. 7. He argued that he did not intentionally open the door. Tr. 473, ll. 7-8. The state contended that J.C.’s response, which contained a reference to the phone records was elicited by defense counsel. Tr. 473, ll. 11-17. The trial court stated that its ruling stood. Tr. 475, l. 16.

Phone records testimony

The state noted that it intended to introduce records for -1136, -9407, and -7422.³ Tr. 476, ll. 2-13. Defense counsel’s objection to the -1136 records were noted for the record and the -9407 and -7422 phone records were admitted without objection. Tr. 476, ll. 13-18.

³ For clarity, the state presented evidence that the -1136 number was associated with appellant, the -9407 number was associated with J.C., and the -7422 number was associated with the deceased.

The state called Jerome DeSheers, who testified as an expert in historical cell site analysis. Tr. 483, ll. 17-24. He completed a report which was based on the phone records, cell site location information, and utilized mapping software. Tr. 484, l. 20 – 485, l. 7. He explained that a map was created and he looked at the records to verify that the program matched what the phone records showed. Tr. 485, ll. 13-15. He identified State's Exhibits 55A and 56A as the report he created. Tr. 486, ll. 8-20; R *(State's Exhibits 55A-56A).⁴ Defense counsel objected based on the earlier discussion, and the reports were admitted over objection. Tr. 487, ll. 1-10.

DeSheers testified that the green dots on his report were T-Mobile towers and the red dots were Verizon towers in existence in May of 2020. Tr. 495, ll. 11-17. Two locations were indicated on his report: Ballenger Street, in Greenville, South Carolina, and 408 Mauldin Road, the incident location. Tr. 495, ll. 18-25. He explained where his report showed the network activity for the -1136 phone and the -9407 phone. Tr. 497, ll. 12-13. He stated that for the time range of May 4, 2020, at 3:34 p.m. to May 5, 2020, at 1:29 p.m. there was call activity and voicemails, with both phones showing a location consistent with Ballenger Street. Tr. 497 l. 13 – 498, l. 10; Tr. 498, ll. 18-22. He then explained network activity between the -1136 phone and the -9407 phone from May 5, 2020, between 5:32 p.m. and 6:56 p.m., noting that both phones were in the same area. Tr. 500, ll. 6-19. For the activity on May 5, 2020, between 7:56 p.m. and 8:47 p.m., DeSheers explained that at 7:56 p.m. both phones were using towers in the Ballenger Street area, but a second tower was being used at 8:29 p.m. based on an incoming call on the -1136 phone from the -9407 phone. Tr. 500, l. 22 – 501, l. 8. At 8:45 p.m., the -1136 phone moved out of the Ballenger area. Tr. 501, ll. 18-22. DeSheers testified that on the night of the incident, the phone associated with appellant was in the vicinity of the hotel. Tr. 503, ll. 7-20.

⁴ The state clarified that the difference between the two exhibits was that one was printed and one was digital. Tr. 487, ll. 14-16.

Discussion

The trial court erred by ruling that defense counsel opened the door to allow the state to admit appellant's properly excluded phone records. Accordingly, this Court should reverse.

"A party may introduce inadmissible evidence in rebuttal when the opponent places a fact at issue." *State v. Simmons*, 430 S.C. 1, 14, 841 S.E.2d 845, 852 (2020). "Once the defendant opens the door, the solicitor's invited response is appropriate so long as it . . . does not unfairly prejudice the defendant; accordingly, the solicitor's response must be proportional." *Id.* (citing *Ellenburg v. State*, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2006) (internal quotation marks omitted). "Testimony in response must be proportional and confined to the topics to which counsel has opened the door." *Heyward*, 426 S.C. at 637, 828 S.E.2d at 595 (citing *Bowman v. State*, 422 S.C. 19, 42, 809 S.E.2d 232, 244 (2018)).

Moreover, "[t]he constitutional right to confront and cross-examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial." *Page*, 378 S.C. at 481, 663 S.E.2d at 359 (citing *State v. Martin*, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987)) (alterations omitted).

For example, in *Heyward*, he sought to prohibit Rivers from testifying that he had allegedly physically abused her during their relationship and the trial court determined the state attempted to introduce evidence to demonstrate Heyward's bad character. 425 S.C. at 633-34, 828 S.E.2d at 593. The trial court ruled that it would not allow Rivers to testify about prior incidents of abuse on direct examination but noted the testimony could be permitted to rehabilitate her. *Id.* at 634, 828 S.E.2d at 593. During trial, Rivers' mother, Singleton, testified about Rivers' behavior after the incident, and on cross-examination, Heyward asked Singleton,

“whether Rivers had attempted suicide begore, whether she knew if Rivers had mental health issues, and whether Rivers had ever accused Singleton’s husband of sexually assaulting her.” *Id.* at 634, 828 S.E.2d at 594. On redirect, the state asked Singleton who had abused Rivers to which Heyward objected. *Id.* The trial court responded, “well, you raised the—you raised the issue. I guess she would—you introduced it, so—.” *Id.* Singleton then testified about Heyward’s history of physically abusing Rivers. *Id.* Our Supreme Court determined that counsel did not open the door to allegations Heyward physically abused Rivers as the cross-examination questions about attempted suicide, mental health, and sexual assault did not arise out of the same fact or transaction as past incidents of physical abuse Heyward may have committed against Rivers. *Id.* at 637, 828 S.E.2d at 595. In addition, our Supreme Court explained that the testimony the state elicited in response was not proportional or confined to the doors counsel had opened through his questioning of Singleton. *Id.*

In *Simmons*, the trial court granted Simmons’s pretrial motion to suppress eight videos of alleged child pornography from an external hard drive in Simmons’s room. 430 S.C. at 15, 841 S.E.2d at 852. During direct examination of VanHouten, a computer forensic examiner, the state asked whether he found child pornography on Simmons’s desktop, which he stated he did not. *Id.* “On cross-examination, Simmons’ trial counsel, who was well aware of the possibility of opening the door, carefully tailored his questions to track the State’s direct examination.” *Id.* Our Supreme Court described that “[c]ounsel did not elicit any substantive testimony regarding the hard drive on which the pornography was found; instead, counsel grouped the items as ‘focus,’ and ‘non-focus.’” *Id.* After cross-examination, “the state asserted that the door had been opened to the introduction of the eight videos found on the hard drive because defense counsel’s questions implied VanHouten did not discover child pornography on any of the

focused items.” *Id.* at 8, 841 S.E.2d 848. The trial court found that “defense counsel’s cross examination implied that VanHouten did not find any videos of child pornography on the focused items, which was not the case.” *Id.* The state played the eight videos before the jury. *Id.* at 8, 841 S.E.2d at 849.

Our Supreme Court determined that defense counsel’s questioning was not sufficient to permit the state to introduce the previously-excluded evidence in rebuttal. *Id.* at 16, 841 S.E.2d at 852. Our Supreme Court pointed to the state’s direct examination where it elicited that no child pornography was found on Simmons’ desktop. *Id.* Our Supreme Court explained that “[t]he trial court’s ruling that defense counsel’s same questioning on cross opened the door to the excluded evidence essentially allowed the State to achieve what it was prohibited from doing directly—discussing and ultimately playing the eight videos for the jury.” *Id.* Our Supreme Court also rejected that the questioning implied VanHouten conducted a fully analysis of the hard drive and found nothing given that counsel “listed the ‘non-focus’ items, asked about the contents of the desktop, and did not mention the ‘focus’ external hard drive.” *Id.* at 16, 841 S.E.2d at 853. Finally, our Supreme Court explained that “the State’s response of playing all the videos for the jury far exceeded the proper scope, and therefore would also be error.” *Id.* (citing *Bowman*, 422 S.C. at 42, 809 S.E.2d at 244).

In appellant’s case, the trial court’s ruling that defense counsel opened the door to the admission of appellant’s phone records through its cross-examination of J.C. constituted an abuse of discretion. Tr. 471, ll. 12-13. When responding to counsel’s question concerning whether she killed the deceased, J.C. replied that “you’ve got plenty of evidence.” Tr. 445, ll. 5-8. Following that response, counsel asked J.C., “what we’ve got.” Tr. 445, ll. 9-10. At that time, J.C. stated, “You don’t got phone records?” to which counsel responded, “No we don’t.

The only testimony we have is you.” Tr. 445, ll. 11- 12. Despite the state’s argument to the contrary, defense counsel’s line of questioning did not create an implication that the only thing law enforcement built their case on was J.C.’s testimony. Tr. 470, ll. 8-10. Defense counsel did not ask J.C. about appellant’s phone records and instead replied to her statement that they had phone records. Moreover, defense counsel’s statement correcting J.C.’s reference to appellant’s properly excluded phone records did not comment on the investigation. Tr. 445, ll. 11- 12; *see e.g., Page*, 378 S.C. at 483, 663 S.E.2d at 360 (explaining that the trial court found Page attempted to elicit replies from the detective to indicate the only evidence she had gathered linking Page to the crime were contradictory statements when the detective, in reality, also had the redacted statement from his codefendant, however, this Court determined that the trial court “erred in finding that Page’s counsel’s zealous representation of his client required the admission of this inadmissible evidence in order to rehabilitate Detective’s investigative techniques.”). In any event, that defense counsel sought to expand on J.C.’s response that there was plenty of evidence to link appellant to the shooting did not place appellant’s phone records at issue, and thus, did not open the door to their admission.

Even further, the admission of appellant’s phone records by the solicitor was not a proportional response. *Simmons*, 430 S.C. at 14, 841 S.E.2d at 852; *Heyward*, 426 S.C. at 637, 828 S.E.2d at 595. The trial court’s erroneous reasoning that defense counsel’s cross-examination implied there was no other evidence when there was, *see* Tr. 471, ll. 15-20, should not have allowed the state to enter the entirety of appellant’s phone records as a rebuttal, *see e.g., Simmons*, 430 S.C. at 16, 841 S.E.2d at 853 (explaining that “the State’s response of playing all the videos for the jury far exceeded the proper scope, and therefore would also be error.”). For instance, defense counsel’s cross-examination of J.C. was lengthy, spanning 43 pages, whereas

his line of questioning that J.C. responded to by implicating appellant's phone records was a single page. *See generally* Tr. 423-466; *see* Tr. 445, ll. 5-12. To allow the state to rebut this brief testimony by entering appellant's phone records, which then allowed the state to present an expert witness to testify about those records, despite the trial court's earlier ruling that the records were obtained based on a deficient search warrant, was an error. *See generally* Tr. 483-519; Tr. 503, ll. 7-20; *see also* R *(State's Exhibits 55A, 56A); *Simmons*, 430 S.C. at 16, 841 S.E.2d at 842 (explaining that the trial court's decision that defense counsel opened the door allowed the state to achieve what it was prohibited from doing directly, discussing and playing the eight videos for the jury, such that "the court's decision was, therefore, an abuse of discretion that deeply prejudiced Simmons' defense.").

Accordingly, although the trial court acknowledged that it found the issue of whether defense counsel opened the door be a "close call," *see* Tr. 471, ll. 12-13, the trial court nonetheless abused its discretion by concluding that defense counsel's cross-examination opened the door to the admission of appellant's phone records, *Heyward*, 426 S.C. at 636, 828 S.E.2d at 594; *Page*, 378 S.C. at 483, 663 S.E.2d at 360.

II.

The trial court erred by refusing to suppress co-defendant J.C.'s phone records because appellant lacked standing since appellant had the right to challenge evidence that the state would use against appellant where the search warrant lacked a sufficient affidavit to establish probable cause.

Relevant facts

Pretrial motion to suppress

During pretrial motions, defense counsel argued that the state intended to introduce cellphone records for appellant and J.C. Tr. 66, l. 24 – 67, l. 1. He provided background and stated that the day after the shooting a Crime Stoppers Tip came in which indicated that J.C., appellant, and JaMarcus Lee were involved and that J.C. had driven a particular car. Tr. 67, ll. 1-7. He contended that a few days later, Investigator Bailey interviewed J.C. Tr. 67, ll. 7-9. He argued that Investigator Bailey sought several search warrants. Tr. 67, ll. 15-22. Defense counsel read the search warrant as follows:

Affiant is an investigator for the Greenville County Sheriff's Office assigned to the Homicide Unit with approximately 30 years of law enforcement experience. Affiant states on May 4, 2020, deputies with Uniform Patrol Division responded to InTown Suites located at 420 Mauldin Road in reference to a gunshot victim. Once deputies arrived, they located a gray in color Ford Mustang bearing South Carolina license tag number RGD 504 in the parking lot that was positioned on the sidewalk next to the brick building. The victim later identified as Nijel Sullivan was observed sitting in the driver's seat not breathing and unresponsive. Affiant further states the victim was shot multiple times and was bleeding from his upper body. EMS later arrived and the victim was pronounced dead."

...

Affiant stated the victim's vehicle was later towed by Hale's Wrecker Service. Subsequent investigation was conducted when

investigators received information that [J.C.] used her cell phone to lure the victim to the incident location so she and another male could rob the victim. Phone number used by [J.C.] to communicate was ‘and it gives a phone number.’ Affiant believes the phone records may contain evidence that could lead to the suspect or suspects responsible for the victim’s murder. Affiant further believes examination of forensic process and said records is necessary for a complete and thorough investigation. Said incident is filed under Greenville County Code . . .

Tr. 69, l. 6 – 70, l. 11. As to the warrant, defense counsel argued that the affidavit lacked the probable cause necessary to obtain a search warrant. Tr. 69, ll. 21-23. The state interjected that because the warrant was not for appellant’s phone records, appellant lacked standing to challenge the warrant for J.C.’s phone records. Tr. 70, l. 22 – 71, l. 2. Defense counsel responded, “I submit the State is going to try to use those records as evidence against my client which gives me standing to object to them.” Tr. 71, ll. 3-5. The trial court asked defense counsel if he had a case to support his argument and he replied that he did not. Tr. 71, ll. 14-17. The court thus ruled that, “I note your strong argument is for that, but I don’t believe that’s the law.” Tr. 71, ll. 18-19.

Trial

J.C.’s phone records were used several times during trial. For example, her cellphone was entered as evidence during trial. Tr. 238, ll. 5-19. The state entered the extraction that was completed for J.C.’s cellphone. Tr. 273, ll. 5-9; Tr. 277, ll. 1-9. Then, during J.C.’s testimony, the state entered several text messages, information from J.C.’s extraction report, and elicited testimony from J.C. concerning those conversations. Tr. 333, l. 17 – 336, l. 4. She described the text messages. Tr. 358, l. 22 – 369, l. 12; *see also* R *(State’s Exhibits 62-64).

Looking at State’s 62, she testified that the first text was on May 6, 2020, to a contact saved as “Skrilla,” where the first text read, “Aye this is bralen u ok? I gotta Lil motion set up I’ll be home rite after.” Tr. 359, ll. 16-24; *see also* R *(State’s Exhibit 62). She read another text

which said, “Yeen been talkin to nobody have you I really hope you stay solid man,” on May 6, 2020. Tr. 360, ll. 9-12. She replied, “Man no I been sleep when I called juice I just woke up,” and appellant responded, “You gotta stay solid to me jay but I gotta talk to you we good. Okay stay solid to me girl don’t let me down ill be home after I handle this. I’ll call you when I’m on the way.” Tr. 360, ll. 14-24. J.C. testified that she took “solid,” to mean not to tell anyone what appellant just did. Tr. 361, l. 2. Looking at State’s 63, she read a May 9, 2020, text that said “Yoo this jaxk you good just checkin on you,” and she testified that appellant was texting. Tr. 364, ll. 14-18; *see also* R *(State’s Exhibit 63). J.C. replied, “I’m good, u good.” Tr. 364, l. 20. Looking at State’s 64, J.C. read the following messages, “Your car is at the church ur keys are behind the back tire on the passenger side,” on May 7, 2020, and “I can’t come around right no u need to take your car to your gmas and park it and stay there.” Tr. 366, l. 18 – 367, l. 2. She continued reading the text messages and explained that she was concerned about her name being brought up in relation to the murder. Tr. 368, l. 1 – 369, l. 2. State’s Exhibits 62 through 64 were admitted over defense counsel’s objection. Tr. 359, ll. 9-14; Tr. 363, ll. 7-13; Tr. 366, ll. 8-15. Finally, the state also entered a video from J.C.’s phone that depicted appellant at the Ballenger house with a gun. Tr. 420, l. 10 – 422, l. 3.

Discussion

The trial court erred by refusing to suppress cell phone records obtained from J.C. because it provided only a cursory ruling that appellant lacked standing to challenge the search warrant. That ruling was erroneous where appellant had the right to challenge a defective warrant for evidence that the state sought to introduce against appellant. Therefore, this Court should reverse.

“A search warrant may issue only upon a finding of probable cause.” *State v. Bellamy*, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). “A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found . . .” *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). When an appellate court reviews the decision to issue a search warrant it must decide whether the magistrate had a substantial basis for concluding probable cause existed. *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). In determining the validity of the search warrant, a reviewing court may only consider information which was brought to the magistrate’s attention. *State v. Martin*, 347 S.C. 522, 527, 556 S.E.2d 706, 709 (Ct. App. 2001).

“In South Carolina, the statutory warrant requirement is separate and distinct from the prohibition in the federal and state constitutions against unreasonable searches and seizures.” *State v. Brown*, 447 S.C. 617, 636, 929 S.E.2d 415, 425 (Ct. App. 2026).⁵ Particularly, South Carolinian requires that search warrants may be issued “only upon affidavit sworn to before the magistrate...establishing the grounds for the warrant.” S.C. Code Ann. § 17-13-140 (2003); *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471 (1987). “A search warrant that would survive

⁵ Rehearing was denied on April 23, 2026, and a petition for writ of certiorari to the Court of Appeals remains pending.

constitutional scrutiny may still be defective under section 17-13-140 of the South Carolina Code.” *Brown*, 447 S.C. at 636, 929 S.E.2d at 425 (citing *McKnight*, 291 S.C. at 113, 352 S.E.2d at 472).

The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. *Franks v. Delaware*, 438 U.S. 154 (1978). Conclusory statements and affidavits provide no basis to make a judgment that probable cause exists. *See State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990); *see also State v. Baccus*, 367 S.C. 41, 52, 625 S.E.2d 216, 222 (2006) (determining that the affidavit failed to set forth any facts as to why police believed appellant committed the crime where the affidavit lacked specificity and contained conclusory statements); *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997). Further, there must be sufficient nexus, described in the affidavit, between the items to be seized and the criminal behavior alleged. *State v. McGuinn*, 268 S.C. 112, 232 S.E.2d 229 (1977).

When a search warrant affidavit relies upon information gathered from other people, “veracity,” “reliability,” and “basis of knowledge” are “all highly relevant in determining the value of his report.” *Gates*, 462 U.S. at 230. Thus, “a warrant based solely on information provided by a confidential informant *must* contain information supporting the credibility of the informant and the basis of his knowledge.” *See 192 Coin-Operated Video Game Machines*, 338 S.C. at 192, 525 S.E.2d at 881 (emphasis added). Importantly, “[i]nformants’ tips, like all other clues and evidence coming to a policeman on the scene may vary greatly in their value and reliability.” *Adams v. Williams*, 407 U.S. 143, 147 (1972).

In *McKnight*, an officer obtained a search warrant for drugs and stolen goods he believed would be found in a mobile home; however, the officer did not complete an affidavit, and the

magistrate judge instead placed the officer under oath to orally recite the facts upon which the warrant was based. 291 S.C. at 112, 352 S.E.2d at 472. An affidavit was not executed. *Id.* During a pretrial suppression hearing, the state contended that the defendants lacked standing to challenge the warrant, but the circuit court ruled that all the defendants but one had standing to challenge the warrant and thus granted the motion to suppress. *Id.* As to standing, our Supreme Court explained that,

[T]he rights afforded by Section 17-14-140 are not dependent upon a showing of an expectation of privacy in the searched premises. The primary purpose of the statute is to insure the timely recording of the testimony upon which the judicial officer relied in issuing the warrant. []. However, the primary *benefit* of the statute is to the person arrested or searched. []. Therefore, one contesting the legality of a search because of a defect under Section 17-13-140 need only show that the State is attempting to introduce the evidence against him.

Id. at 115, 352 S.E.2d at 474 (internal citations and quotations omitted, emphasis in original). Our Supreme Court therefore determined that because the trial court’s ruling was on statutory grounds, each of the respondents against whom the evidence was offered had standing to object to the validity of the search. *Id.*

Recently, in *Carroll*, this Court considered Carroll’s argument that under *McKnight* the circuit court erred in ruling that he lacked standing to challenge evidence found on the victim’s cellphone. *State v. Carroll*, Op. no. 2024-000722, (S.C. Ct. App. filed August 12, 2026) (Davis Adv. Sh. No. 30 at 4). During pretrial motions, Carroll moved to suppress, as relevant, evidence obtained from the victims cellphone. *Id.* at 3. The circuit court found that Carroll lacked standing to argue the legitimacy of a search warrant for the victim’s property. *Id.* This Court agreed with Carroll that he had “standing under our appellate precedent to challenge the admissibility of this evidence,” however, the “oral supplementation cured the deficiency in the

scant search warrant affidavit.” *Id.* at 4. This Court ultimately reaffirmed that “Carroll has standing to challenge the warrant for each phone because the State is attempting to introduce this evidence against him, and he is contesting the legality of a search due to an alleged defect presented pursuant to section 17-13-140.” *Id.* at 9 (citing *McKnight*, 291 S.C. at 114-15, 352 S.E.2d at 473-74).

In appellant’s case, the trial court committed an error of law by accepting the state’s position that appellant lacked standing to challenge the search warrant for J.C.’s phone records. *English*, 443 S.C. at 55, 902 S.E.2d at 388; *see* Tr. 70, l. 22 – 71, l. 19. This Court recently reaffirmed that standing exists under *McKnight* to challenge a search warrant for another’s phone records where the warrant is defective and the state is attempting to introduce that evidence against the accused. *See Carroll*, Op. no. 2024-000722, (S.C. Ct. App. filed August 12, 2026) (Davis Adv. Sh. No. 30 at 4, 9). Defense counsel presented argument that the warrant for J.C.’s warrant was defective as it did not contain facts sufficient to support probable cause in the warrant affidavit and properly argued that when the state attempts to use evidence against appellant, he had standing to object. *See* Tr. 69, l. 6 – 70, l. 11; Tr. 71, ll. 3-5. The trial court was thus incorrect when it ruled that defense counsel’s argument concerning his ability to object to the search warrant was not the law. Tr. 71, ll. 18-19.

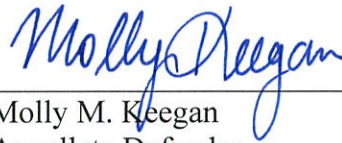
In any event, the search warrant affidavit was deficient because it failed to set forth facts to establish the existence of probable cause to allow the magistrate to make an independent evaluation. *Bellamy*, 336 S.C. at 143, 519 S.E.2d at 348. The warrant affidavit for J.C.’s phone records merely stated that “investigators received information,” that J.C. used her cellphone in connection with the alleged offense. Tr. 69, l. 6 – 70, l. 11. As defense counsel argued below, those conclusory statements were based on an uncorroborated Crime Stoppers Tip which

indicated that J.C., appellant, and another individual were involved with the shooting incident. Tr. 67, ll. 1-7; *Smith*, 301 S.C. at 373, 392 S.E.2d at 183; *Baccus*, 367 S.C. at 52, 625 S.E.2d at 222. The warrant affidavit fails to identify where or who the “information” investigators received was from and the affidavit was silent as the reliability or veracity of the informant’s information. Tr. 69, l. 6 – 70, l. 11; *Gates*, 462 U.S. at 230. Moreover, the record does not demonstrate that Investigator Bailey orally supplemented the warrant to provide information about the reliability of the tip received. See Tr. 78, ll. 6-7; *But see State v. Rutledge*, 373 S.C. 312, 318, 644 S.E.2d 789, 792 (Ct. App. 2007) (Rutledge argues that the affidavit lacked probable cause because it failed to detail the investigation referred to and did not establish the confidential informant’s reliability, however, this Court determined that “ [g]iven all the circumstances in the affidavit and the supporting oral testimony, including the informant’s information, the electric bill in Rutledge’s name, Rutledge’s prior convictions, and the marijuana found in the trash can in front of the residence, we conclude that the magistrate had substantial basis for concluding that probable cause existed to issue a search warrant of the residence.”). The result is that the affidavit lacked specificity, provided no facts concerning the reliability of the “information received,” and relied only on conclusory statements. Therefore, the search warrant affidavit was deficient as the totality of the circumstances set forth in the affidavit failed to provide a substantial basis for the issuing magistrate to determine that probable cause existed. *Kinloch*, 410 S.C. at 617, 767 S.E.2d at 155; *Dupree*, 354 S.C. at 683, 583 S.E.2d at 441; *Martin*, 347 S.C. at 527, 556 S.E.2d at 709.

Accordingly, the trial court committed an error of law by finding that appellant lacked standing to challenge the search warrant for J.C.’s phone records where the warrant affidavit was defective because it failed set forth sufficient facts to establish probable cause.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests that this Court reverse his convictions and sentence and remand to the Court of General Sessions of Greenville County for a new trial.



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Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of August, 2026.